

1

2

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

5

6 LASHAWN L. TURNER-BEY,

Plaintiff,

8

9 GARRETT, *et al.*,

10 Defendants.

Case No. 3:21-cv-00007-MMD-WGC

ORDER

11

12 On January 6, 2021, the Court issued an order directing Plaintiff Lashawn Turner-
13 Bey to file a fully complete application to proceed *in forma pauperis* or pay the full filing
14 fee of \$402.00 on or before March 8, 2021. (ECF No. 3 at 2.) On January 21, 2021,
15 Plaintiff filed an incomplete application to proceed *in forma pauperis*. (ECF No. 4.) The
16 March 8, 2021 deadline has now expired and Plaintiff has not filed a fully complete
17 application to proceed *in forma pauperis* or paid the full \$402.00 filing fee.

18 District courts have the inherent power to control their dockets and “[i]n the
19 exercise of that power, they may impose sanctions including, where appropriate . . .
20 dismissal” of a case. *Thompson v. Hous. Auth. of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986).
21 A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an
22 action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v.*
23 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local
24 rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for
25 failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
26 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule
27 requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*,
28 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court

1 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal
 2 for lack of prosecution and failure to comply with local rules).

3 In determining whether to dismiss an action for lack of prosecution, failure to obey
 4 a court order, or failure to comply with local rules, the court must consider several factors:
 5 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
 6 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 7 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
 8 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
 9 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

10 Here, the Court finds the first two factors, the public's interest in expeditiously
 11 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
 12 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
 13 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
 14 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air W.*,
 15 Inc., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
 16 disposition of cases on their merits—is greatly outweighed by the factors in favor of
 17 dismissal discussed herein. Finally, a court's warning to a party that failure to obey the
 18 court's order results in dismissal satisfies the “consideration of alternatives” requirement.
 19 *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424.

20 The Court's order requiring Plaintiff to file an application to proceed *in forma*
 21 *pauperis* or pay the full filing fee on or before March 8, 2021 expressly stated: “IT IS
 22 FURTHER ORDERED that, if Plaintiff does not file a fully complete application to proceed
 23 *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action
 24 on or before March 8, 2021, this case will be subject to dismissal *without prejudice* for
 25 Plaintiff to refile the case with the Court, under a new case number, when Plaintiff has all
 26 three documents needed to file a complete application to proceed *in forma pauperis* or
 27 pays the full \$402 filing fee.” (ECF No. 3 at 3 (emphasis in original).) Plaintiff therefore
 28 had adequate warning that dismissal would result from noncompliance with the Court's

1 order to file a fully complete application to proceed *in forma pauperis* or pay the full filing
2 fee on or before March 8, 2021.

3 It is therefore ordered that this action is dismissed without prejudice based on
4 Plaintiff's failure to file a fully complete application to proceed *in forma pauperis* or pay
5 the full \$402.00 filing fee in compliance with the Court's order dated January 6, 2021 (ECF
6 No. 3).

7 It is further ordered that Plaintiff's pending motion (ECF No. 4) is denied as moot.

8 The Clerk of Court is directed to enter judgment accordingly and close this case.
9 No additional documents will be filed in this closed case.

10 DATED THIS 15th Day of March 2021

11
12 
13 MIRANDA M. DU
14 CHIEF UNITED STATES DISTRICT JUDGE

15
16
17
18
19
20
21
22
23
24
25
26
27
28